



DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
FORT NORFOLK, 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1098

REPLY TO
ATTENTION OF:

November 25, 2009

Western Virginia Regulatory Section
05-R0222/NAO-2009-5097 (Stumpy Lake)

Tri-City Properties, LLC
Attn: Edward Garcia
3333 Virginia Beach Boulevard
Virginia Beach, Virginia 23452

Dear Mr. Garcia:

This letter is in reference to your proposal to impact 29.8 acres of forested wetlands as part of a 61 acre commercial and multi-family development on property you own east of Centerville Turnpike in Chesapeake, VA.

The public notice comment period has expired and you have already been provided the comments we received. Please address the public notice comments as well as issues raised in this letter.

The Section 404(b)(1) Guidelines state at 230.10(a)(3) "Where the activity associated with a discharge which is proposed for a special aquatic site does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic project purpose (i.e. is not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise." We have determined that your proposed development is not water dependent and therefore it is presumed that practicable alternatives exist. In addition, "where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise." It is the responsibility of the applicant to rebut the presumptions that practicable alternatives exist and that such alternatives would have less adverse impact on the aquatic ecosystem.

Your previous proposal impacting 181 acres of wetlands was denied as it was found to be contrary to the public interest and did not comply with the Section 404(b)(1) Guidelines due to the fact that you failed to disprove that the use of the 90 acres of uplands was not a less environmentally damaging practicable alternative. Reducing wetland impacts to 29.8 acres is a positive step in attempting to minimize wetland impacts, but you still have not provided adequate information to rebut the presumption that the proposed 61 acre development in the 90 acres of upland on your property represents the least environmentally damaging practicable alternative. Therefore, based on the current information we would have no choice but to recommend denial of this proposal as well.

In our March 3, 2008 permit denial letter for the previously proposed 181 acres of wetland impacts we recommended that you first work with the City of Chesapeake to determine the amount of development that would be allowed in the 90 acres of uplands on your property and then conduct a preapplication consultation with our office prior to applying for any future permits. The City of Chesapeake in a letter dated June 10, 2009 also advised you to consult with the City in a preapplication meeting for the proposed development on this parcel.

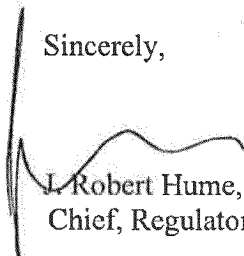
In a letter dated August 20, 2009 the City of Chesapeake Department of Planning indicated they approved rezoning in 1989 on 922 acres of property you own, including the 428 acre parcel on which this development is proposed, and again on 568 acres of the 922 acres in 1995 with agreed upon proffers. The City of Chesapeake also indicated in this letter that your current development proposal does not meet the 1995 rezoning in that multi-family development is shown in areas zoned B-1 and that it does not meet agreed upon proffers. It appears your current development proposal will require rezoning.

Since the proposal will require rezoning, this as an opportunity for you to meet with the City and Council as we have both suggested and discuss what type of development in the 90 acres of uplands would be allowed and what proffers would be required for various densities of development of this 90 acres of uplands. We request that you set up a meeting between your staff, the Corps and appropriate persons from the City of Chesapeake to discuss your proposed development and the potential use of the 90 acres of uplands. Please provide our office with a list of attendees for this meeting also.

We will discuss our concerns with your proposed mitigation once we are satisfied that you have avoided and minimized wetland impacts to the maximum extent practicable.

Please contact Robert Berg of my staff at (757) 201-7793 with any questions concerning this matter.

Sincerely,



J. Robert Hume, III
Chief, Regulatory Office

Copies Furnished:

Environmental Protection Agency, Philadelphia
U.S. Fish and Wildlife Service, Gloucester